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LEGAL ETHICS (Part 1)

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Avoiding Risky Business

Entering into business transactions with clients can lead to financial entanglements and ethical lapses

By Ellen Peck

Bill's client wants him to invest in his business venture. Kate's client wants to invest in the same private offering in which Kate has invested. Jim's client needs a loan to support his family until the settlement check comes in. Linda has asked her wealthy client for a loan to carry her law practice through a tough time. Mike's client offers Mike a lien against the client's community interest in a residence to secure Mike's legal fees in a dissolution of marriage action.

Can these lawyers enter into these transactions with their clients?

Provided a lawyer complies fully with rule 3-300, Rules of Professional Conduct, there is no statute, rule or professional standard that prohibits lawyers from entering into these transactions with their clients.

However, Bill, Kate, Linda, Jim and Mike may risk inability to enforce these transactions or face civil and disciplinary liability for failure to comply with each element of rule 3-300, including an inability to document that the transaction is fair and reasonable to the client.

In this two-part series, I will describe the breadth of transactions regulated by rule 3-300, transactions which are excluded from its regulation, the risks and client remedies for failure to comply with rule 3-300, and suggested steps to comply with rule 3-300.

Deep roots

Regulation of transactions between clients and their lawyers has deep roots in the history of California jurisprudence and derives from three independent sources: the common law, legislative policy and Supreme Court-approved Rules of Professional Conduct.

Soon after statehood, California's appellate courts developed common law principles that lawyers' fiduciary duties to clients required that all lawyer-client transactions wherein the lawyer receives a perceived benefit should be closely scrutinized for unfairness and that the transaction be set aside if any unfairness is found. (See e.g. *Valentine v. Stewart* (1860) 15 Cal. 387, 401.)

Current Probate Code §16004, subd. (c), which was intended to continue the longstanding presumption consistent with case law interpreting of former Civil Code §235, creates a presumption of violation of the trustees' fiduciary duties in any transaction between attorney and client wherein the attorney obtains an advantage.

Rule 3-300 is the direct successor of former rule 4 ["A member of the State Bar shall not acquire an interest adverse to a client"], which was one of the first 17 Rules of Professional

Conduct adopted by the Supreme Court in 1927 at the very inception of the State Bar of California.

Civil law developments have historically influenced the evolution of disciplinary case law and vice versa. Principles arising from common law, the presumption of undue influence and Rules of Professional Conduct are often used and cited interchangeably, weaving a comprehensive body of law regarding lawyer-client relations.

However, there is one point of divergence between civil and disciplinary case law: The presumption of undue influence does not apply to provisions of an agreement relating to the hiring or compensation of an attorney (*Walton v. Broglio* (1975) 52 Cal.App.3d 400, 404; Prob. Code §16004(c)), but certain compensation agreements are within the scope of rule 3-300. (Comment to rule 3-300; *Hawk v. State Bar* (1988) 45 Cal.3d 589, 604-605.)

Business transactions

In order to determine whether rule 3-300 applies to a transaction between the attorney and another person, the "person" or entity must be a "client" at the time of the transaction and the transaction must be either a business transaction or a knowing acquisition of ownership, possessory, security or other pecuniary interest adverse to the client.

1. For the purposes of rule 3-300, who is a "client?"

Current clients: Any person or an entity with which the lawyer has an attorney-client relationship at the time of the transaction is a client. (*Ritter v. State Bar* (1985) 40 Cal.3d 595 [human client]; In the *Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139 [corporate client].) Since attorney-client relationships can be created by express or implied contracts, a person to whom a lawyer may have given legal advice, without any intentional legal representation, may be a "client" requiring compliance with rule 3-300. (Regarding lawyer-client relationships created by implied contracts, see Vapnek, Tuft, Peck & Weiner (The Rutter Group 1997) California Practice Guide — Professional Responsibility, vol. 1, chap. 3, pp. 3-8 to 3-17; §§3:43-3:83.)

The transaction does not have to be related in any manner whatsoever to the subject matter of the representation. (*Dixon v. State Bar* (1982) 32 Cal.3d 728, 733 [Lawyer was retained by client to perform a legal service and thereafter the lawyer borrowed money from the client.])

Former clients: Even after you think that the lawyer-client relationship has ended and that it is safe to deal with your former client at arm's length, think again. A former client who invested the proceeds of recovery which lawyer obtained arising out of an attorney-client relationship is a "client" within the meaning of the rule. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 811 (3a).) The former client who still trusts the attorney because of past attorney-client relationship has been held to be a client. (*Hunniecutt v. State Bar* 44 Cal.3d 362, 371-372; *Arden v. State Bar* (1987) 43 Cal.3d 713, 725-726.)

Prospective clients: In some circumstances, rule 3-300 may apply to certain provisions of fee agreements (creating a possessory or pecuniary interest in client property or interests in client property as a security for fees) even before the inception of a lawyer-client relationship. (See rule 3-300 comment, paragraphs 1 and 3 and Fam. Code §2033.)

Non-clients: Even if you have never had a lawyer-client relationship with a person, there are some cases in which the California Supreme Court has imposed discipline because the personal relationship was one of trust and confidence reposed in the lawyer after a finding of impropriety in the transaction. In many cases, the relationship of trust and confidence arose out of some other form of fiduciary relationship.

For example, an attorney was disciplined for obtaining $25,000 from the 77-year-old mother of his law partner for a purported investment as a limited partner in a real estate venture, without explaining the transaction or the lawyer's ownership interest in the venture and without completing the documents to confer a limited partnership on the woman. (*Worth v. State Bar* (1976) 17 Cal.3d 337, 341.)

An attorney who represented an administrator of a decedent's estate attempted to purchase real property from a beneficiary of the estate without disclosing that the buyer was the attorney's corporate alter ego and the property had been appraised for substantially more than the purchase offer. (*Sodikoff v. State Bar* (1975) 14 Cal.3d 422, 430-431.)

2. If you are dealing with a sophisticated client, isn't the need for compliance with the rule lessened?

No. The very character of the lawyer-client relationship creates fiduciary duties to protect the client's interests, even those of the sophisticated client, and prohibits any lawyer from obtaining an unfair advantage from the client. (*Gold v. Greenwald*, (1966) 247 Cal.App.2d 196, 300, 305 [The presumption of undue influence in a joint venture real estate transaction was found even where the client was expressly found to be an experienced, capable and successful businesswoman, with substantial experience in real estate investments.]; *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139 [Rule 3-300 applied where the client was a sophisticated corporation doing business in the computer software field.])

Sometimes the sophistication of a client has been a factor in determining one of the elements in a case. For example, in *Oliker v. Gershunoff* (1987) 195 Cal.App.3d 1288, 1294-1295, the sophistication of the clients was a factor enabling the attorney to rebut a presumption of undue influence. However, elsewhere in the opinion, the court held that the attorney/partner violated his fiduciary duties as a partner to his non-attorney partners on the ground that the lawyer/partner was a seasoned expert attorney who had superior knowledge of the potential legal implications of a transaction with the non-attorney parties who were laymen without any formal legal training. (*Oliker v. Gershunoff*, supra, 195 Cal.App.3d at p. 1305.)

Wallis v. State Bar (1942) 21 Cal.2d 322, 328-329 is sometimes described incorrectly as a case in which sophistication of the client was a defense to discipline. Wallis did not involve any charge of a violation of rule 3-300's predecessor. Rather, the Supreme Court dismissed a disciplinary proceeding charging the attorney with violating Business & Professions Code §6106 by making a false statement to a former client regarding a loan because the State Bar failed to prove the essential element of an intent to deceive.

Although the court made a passing reference to the fact that the former client had been engaged in real estate business for a year prior to entering into the loan (thus implying business "sophistication"), the court expressly found that the parties were dealing at arm's length, since the lawyer-client relationship had terminated long before the transaction occurred.

Perhaps the latest word on how courts view the "sophisticated client" factor is demonstrated by *Mayhew v. Benninghoff* (1997) 62 Cal. Rptr.2d 27, 30:

"We are baffled by Benninghoff's argument that his ethical responsibilities are lessened because he was dealing with a client who is 'very wealthy, having deposited with the attorney more than $607,000 of his own funds,' and 'who is highly schooled in business affairs and is a fully licensed contractor.' Not all fools are poor. We decline to adopt a rule that encourages unscrupulous lawyers to make them so.

"We also question *Benninghoff's* breezy assurances that Mayhew is a sophisticated user of legal services . . . Had he been such, he may not have chosen to consult Benninghoff, whose acumen and integrity have not been well demonstrated by the arguments he made in this appeal."

3. No deed goes unpunished.

Many lawyers enter into transactions with their clients out of good motivations, to help the client out of a jam. Courts have consistently held that the good motivations of the lawyer to benefit the client is not a defense to compliance with rule 3-300.

The most recent example of the "no good deed goes unpunished" rule is *Passante v. McWilliam* (1997) 62 Cal.Rptr.2d 298, 299-302. Therein, an attorney literally saved his client's company from extinction by arranging for a loan at a critical point in the company's startup. The grateful company orally promised 3 percent of the stock in the fledgling company. Thereafter, the company prospered.

When the lawyer later tried to specifically enforce the oral agreement, the court refused to enforce the promised stock on the basis that the lawyer had not complied with rule 3-300 and therefore the transaction was unsupported by adequate consideration. (See also *Hawk v. State Bar* (1988) 45 Cal.3d 589, 604-605 [Intention of lawyer to aid client is irrelevant if it was reasonably foreseeable that an acquisition may become detrimental to the client].)

Does this mean that we should ignore the spirit of Mother Theresa in responding to our clients' misfortunes? No, but the fiduciary nature of our relationships with our clients demands that we comply with rule 3-300 even when our purpose in entering transactions with clients is for their benefit.

4. Within the rule's ambit.

The scope of business transactions which trigger a duty to comply with rule 3-300 is very broad and includes, but is not limited to, the following types of transactions:

* Loans from a client to a lawyer. (*Slavkin v. State Bar* (1989) 49 Cal.3d 894, 899, 901, 903; Rhodes v. State Bar (1989) 49 Cal.3d 50, 55; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.)
* Loans to a client from a lawyer. (See *Dixon v. State Bar* (1982) 32 Cal.3d 728, 733; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 617 [Even where the loan was made to cover funeral expenses of the client's minor daughter.])
* Licensing agreements. Attorney was disciplined when Attorney caused his company, his client-employer, to enter into a licensing agreement for a video game with XYZ Corp. without disclosing that XYZ was wholly owned by Attorney. (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 152, 154.)
* Investments. Inducing client investment in real estate development in which attorney has an interest. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153; see also Ethics Opinion 1984-1, San Diego County Bar Association, Cal.Comp. on Prof. Resp. and Conduct, II C-361-362.)
* Hotels. Attorney who served as lawyer, business manager, business adviser and agent to Entertainer induced Entertainer to invest in hotel in which Attorney also served as executive and had an interest in a management firm which operated that hotel, without making full disclosure of the lawyer's interest. (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 627-629.)
* Client's corporate stock as gift or bonus from the client. (*Passante v. McWilliam* (1997) 53 Cal.App.4th 1240 [62 Cal.Rptr.2d 298].)

* Arbitration clauses with existing clients. A broad arbitration clause agreed upon during the lawyer-client relationship may not be enforced to require arbitrability of a lawyer-client dispute about investments or other business transactions unrelated to the provision of legal services. (*Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365; see also Formal Opinion No. 1981-56 of the California State Bar Committee on Professional Responsibility and Conduct.)

However, see *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal.App.4th 1102 [63 Cal.Rptr.2d 261], which held that where a lawyer and clients amend an existing legal malpractice arbitration clause in which the amendment is fair and equitable to both parties and not adverse to the client, a lawyer need not advise the clients to seek the advice of independent counsel.

5. Knowing and adverse.

Not all lawyer acquisitions of ownership, possessory, security or other pecuniary interests involving clients are within the ambit of rule 3-300. A lawyer's acquisition must be knowing and the acquisition must be adverse to a client.

What is a knowing acquisition? In lawyer disciplinary proceedings, the State Bar must prove that the lawyer's acquisition was knowing. Where the failure of compliance with rule 3-300 results from the negligence of a lawyer's employee and the evidence clearly established that the lawyer had taken steps to provide appropriate guidance to employee concerning the proper compliance with the rule, a lawyer will not be culpable for the violation. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 627.)

Caution: The writer has found no civil appellate case discussing whether the scienter requirement of rule 3-300 is applicable to an attorney's breach of fiduciary duties arising out of acquisitions of client interests adverse to the client.

What acquisitions are adverse to the client?

An acquisition is adverse to the client if, under the circumstances, it is reasonably foreseeable to the lawyer that the acquisition may be detrimental to the client's interests in the future. (*Ames v. State Bar* (1975) 8 Cal.3d 910, 920.) An acquisition also is adverse to the client if the attorney acquires the ability to extinguish a client's interest in the property, whether or not the lawyer ever acts to do so. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1058; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 759-760.)

What types of acquisitions of client interests are considered adverse to the client?

The following types of lawyer acquisitions have been considered adverse to the client and therefore required compliance with rule 3-300.

* Obtaining an interest in client's real property as security for future or past due attorneys' fees.

The comment to rule 3-300 at paragraph 3 provides that the rule "is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees." (See also *Hawk v. State Bar* (1988) 45 Cal.3d 589; *Read v. State Bar* (1991) 53 Cal.3d 394, mod. 53 Cal.3d 1009A; Formal Opinion No. 1981-62, State Bar of California Committee on Professional Responsibility and Conduct [Cal. Compendium on Prof. Resp., II A-172-174; Opinion No. 398, Los Angeles County Bar Association Committee on Ethics, Cal. Comp. on Prof. Resp. and Conduct, vol. III, pp. 102-103.)]

A lawyer who acquires a family law real property lien against a client's community property pursuant to Family Code §2033 must, in addition to the procedures described in family law courts, comply with the provisions of rule 3-300.

Personal property which serves as the security for attorneys' fees also is considered adverse to the client. (See Opinion No. 407, Los Angeles County Bar Association Committee on Ethics, Cal. Comp. on Prof. Resp. and Conduct, vol. III, pp. 111-112 [Mink coat held as security for attorney's fees]; *Martin v. State Bar* (1991) 52 Cal.3d 1055 [Taking a Rolex watch as security for past due fees was adverse.].)

* Borrowing trust money from a trust where the attorney is trustee. (*Schneider v. State Bar* (1987) 43 Cal.3d 784; *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297.)

* Acquiring subject matter of litigation. Acquiring property in the attorney's name or the lawyer's family member's name which had been the subject of the litigation handled by that lawyer on behalf of the client. (*Silver v. State Bar* (1974) 13 Cal.3d 134; *Calzada v. Sinclair* (1970) 6 Cal.App.3d 903.)

* Advising client investments. Attorney advised Client A to invest in bonds purchased from Attorney's Client B. Unbeknownst to Client A, Attorney also acquired bonds from Client B at a more favorable rate. (See e.g. *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 629-630.)

Lawyer represented charitable educational corporation and simultaneously became a general partner of a partnership, which acquired a loan from the corporation, which was negotiated and the legal work prepared by the lawyer to process the loan, wherein the lawyer was not personally responsible on the loan.

The Supreme Court found the lawyer had acquired a financial interest adverse to his client since his lack of personal responsibility put him in a position where his personal financial interest was in conflict with the corporation's interest in obtaining full repayment of the loan. The court found further adversity when the lawyer obtained a loan extension on behalf of himself as general partner because the extension benefited him and his partners at the expense of the corporation. (*Kapelus v. State Bar* (1987) 44 Cal.3d 179, 192-194.)

* Quitclaim deed to client's property. A quitclaim deed acquired by the attorney coupled with a general power of attorney, which permitted the attorney to summarily extinguish the client's interest in the property. (*Brockway v. State Bar* (1991) 53 Cal.3d 51.)

* Purchasing client's property. Purchasing the first deed of trust to a client's property which enabled the lawyer to extinguish the client's junior encumbrance interest in the property constituted the acquisition of an interest adverse to the client. (*Ames v. State Bar* (1975) 8 Cal.3d 910, 918-919.)

* Use of client's credit cards. Acquiring the use of a client's credit cards to purchase clothing and gifts without immediately repaying the client. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 605-606.)

* Loan from client. A loan from a client while the attorney is waiting payment of past due fees from that client is adverse to the client. (*Sugarman v. State Bar* (1990) 51 Cal.3d 609, 615-617.)

* Finders' fees. Handling a real estate purchase on behalf of a client wherein the attorney urges client to purchase certain real estate and receives an undisclosed finder's fee from the seller is adverse. (See e.g. *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1364-1366.) An attorney for an estate's executor negotiated the sale of estate real property for which both the executor and attorney were offered a finder's fee of 4 percent of the purchase price, in excess of the statutory fee. This is an adverse acquisition of pecuniary gain. (Op. No. 317, Los Angeles County Bar Association, Cal. Comp. on Prof. Resp. & Cond., vol. III, p. 15.)

* Use of client's confidential business information. Use of confidential information acquired in the attorney-client relationship from a client to acquire the clientele of that client to perform specialized services for that clientele. After ceasing to represent a collection agency, the lawyers used confidential information to acquire specialized collection work from the former client's (the collection agency's) own customers. (*David Welch Co. v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 890-892.)

* Attorney acting as guarantor on a client's cost bond. (Formal Opinion No. 1981-55, State Bar of California Committee on Professional Responsibility and Conduct [Cal. Compendium on Prof. Resp., II A-147-148.])

* Negotiation with existing client for an arbitration provision in a retainer agreement, should the client make a claim for legal malpractice, is adverse. (Formal Opinion No. 1989-66, State Bar of California Committee on Professional Responsibility and Conduct [Cal. Compendium on Prof. Resp., II A-318, at page 320].) Note: *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal.App.4th 1102 [63 Cal.Rptr.2d 261], which held that where a lawyer and clients amend an existing legal malpractice arbitration clause in which the amendment is fair and equitable to both parties and not adverse to the client, a lawyer need not advise the clients to seek the advice of independent counsel.

* Use of client information in the media. Where the lawyer is representing a client in a pending case, selling the entertainment industry information about the client or the client's case is the acquisition of an adverse interest. (Opinion No. 409, Los Angeles County Bar Association Committee on Ethics [Cal. Compendium on Prof Resp. and Cond., vol. III, pp. 112-114.]) However, if a lawyer is writing a law review article, there is no adversity if the article does not take a position different than that which the client is taking on appeal. (Opinion No. 451, Los Angeles County Bar Association Committee on Ethics [Cal. Compendium on Prof. Resp. and Cond., vol. III, pp. 156-157.])

* Finder's fee or kickbacks. Recommending investment opportunities for client in which lawyer receives an undisclosed finder's fee or kickback for locating sources of funding. (See e.g. *Rose v. State Bar* (1989) 49 Cal.3d 646, 660-663.) Referral fee from a real estate broker to the attorney for an estate, when the attorney gave the real estate agent an exclusive listing of the property. (Ethics Opinion 1989-2, San Diego County Bar Association, Cal. Comp. on Prof. Resp. and Cond., IIC-379-380.)

* Trust instruments. Creating a trust instrument in which the attorney could become the sole trustee and make loans to him or herself without any supervision is an acquisition of pecuniary interest adverse to the client. (*In the Matter of Fonte* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 752.)

6. What types of transactions, standing alone, do not require compliance with rule 3-300?

The following situations, without more, are exempt from rule 3-300's scope:

* Acquiring special power of attorney to execute the client's signature, absent any overreaching by the attorney. (*In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.)

* Acquiring the client's authorization to sign the client's name to settlement drafts, absent overreaching or fraud. (*In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.)

* Suing a former client/employer regarding employment rights. An attorney's civil action against an employer or former employer (corporation or government entity), for loss of

employment rights is not addressed by rule 3-300. (*Santa Clara County Counsel Attys. Assn. vs. Woodside* (1994) 7 Cal.4th 525, 545.)

* Engagement, retention and fee agreements. Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory or other pecuniary interest adverse to the client or creates a security for future or past due fees. (Comment to rule 3-300, paragraphs 1 and 3; see also *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904 which held that a lawyer rebutted the presumption of undue influence (Probate Code, §16004, subd. (c)) with respect to certain provisions of fee contracts.)

* Contingency fee contracts with a new client are not within the scope of rule 3-300. (Formal Opinion No. 1987-94 of the State Bar's Standing Committee on Professional Responsibility and Conduct.)

* Investment in publicly traded companies. Rule 3-300 is not intended to apply where a lawyer and client each make an investment on terms offered to the general public or a significant portion thereof. (Rule 3-300 comment, paragraph 2.)

* Financial transactions between lawyer's family members and client. Transaction between client and lawyer's parents where the lawyer received no benefit financially is not within rule 3-300. (*In the Matter of Fandey* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 767.)

* Unintentional transfers of "some" interest to lawyer. Where transfer of property was not intended to confer to lawyer any interest in client's property, the fact that some interest was unintentionally transferred is not within rule 3-300. (*In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439.)

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Test — Legal Ethics
1 Hour MCLE Credit

This test will earn 1 hour of MCLE credit in Legal Ethics.

1. True/False. California law absolutely prohibits business transactions between lawyer and an existing client.

2. True/False. Regulation of lawyer-client business transactions is derived solely from the Rules of Professional Conduct.

3. True/False. Rule 3-300, Rules of Professional Conduct, regulates only business transactions or pecuniary interests adverse to current, existing clients.

4. True/False. Entering into a business transaction with a sophisticated client obviates the need for strict compliance with rule 3-300, Rules of Professional Conduct.

5. True/False. If a lawyer acquires an interest in a client's property with the intention of benefiting the client, strict compliance with rule 3-300 is not necessary.

6. True/False. The presumption of breach of fiduciary duty does not apply to contingency fee agreements executed at the inception of the lawyer-client relationship.

7. True/False. A lawyer may loan a needy client money to pay the funeral expenses of a minor child without advising the client in writing of the opportunity to seek the advice of independent counsel.

8. True/False. An attorney is permitted to borrow money, pursuant to an oral contract, from a client that she has represented for years.

9. True/False. A corporate lawyer may not sue his former corporate employer for wrongful termination without violating rule 3-300.

10. True/False. If a lawyer knows that her clients have invested in a publicly traded company, she is not permitted to purchase shares in the company on the same terms of a public offering because the lawyer will thereby engage in a business transaction with the clients.

11. True/False. A lawyer is permitted to receive an undisclosed finder's fee for inducing his clients to engage in a business transaction of another client.

12. True/False. A lawyer who borrows money from a client may assert the privacy of information about her own financial situation.

13. True/False. A corporate client's spontaneous gift of shares in the corporation in recognition of its lawyer's extraordinary legal services may be accepted by the lawyer immediately and the gift need not be supported by any consideration.

14. True/False. A lawyer may be disciplined for his employee's negligent failure to follow procedures in compliance with rule 3-300.

15. True/False. A lawyer may never acquire an interest in a client's property which is adverse to the client.

16. True/False. A pecuniary interest adverse to a client includes a set of circumstances in which a lawyer can foresee that her acquisition is potentially detrimental to the client.

17. True/False. A lawyer's use of a client's credit cards to purchase clothes and family holiday gifts is de minimis and outside the scope of rule 3-300.

18. True/False. Use of confidential client information in competition with the client's specialized business is an acquisition adverse to the client.

19. True/False. A lawyer need not advise a client to have a trust reviewed by another attorney where the lawyer creates a trust at the client's request in which the lawyer may become a sole trustee and would then be authorized to borrow any sum of money from the trust on any terms without approval of any third party.

20. True/False. Acquiring a special power of attorney permitting the attorney to execute the client's signature to litigation documents requires compliance with rule 3-300.

Certification

- This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour, of which one hour will apply to legal ethics.

- The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

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LEGAL ETHICS (Part 1)

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1.	TRUE ____	FALSE _____	11.	TRUE ____	FALSE _____
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